

The State Bar of California

WORKLOAD STANDARDS REPORT

**A Review of Disciplinary Activities In Relation to
Staffing Levels for 1998, 1999, and 2000**

In Compliance With 2000 Senate Bill 1420

September 2001

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The State Bar of California

**180 Howard Street
San Francisco, CA 94105
(415) 538-2000**

**1149 South Hill Street
Los Angeles, CA 90015-2299
(213) 765-1000**

Web Site: <http://www.calbar.org>

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I. BACKGROUND

In 2000, the Legislature enacted Senate Bill 1420 (Burton) which amended Business and Professions Code Section 6140.16 to require the State Bar to review its workload standards and submit a report to the Legislature by June 30, 2001. This report is submitted in compliance with Senate Bill 1420.

A. BUSINESS AND PROFESSIONS CODE SECTION 6140.16

This statute states:

“The State Bar shall review its workload standards to measure the effectiveness and efficiency of its disciplinary activities, including, but not limited to, the State Bar Court and the Client Security Fund, and provide guidance to the State Bar and the Legislature in allocating resources. The standards shall be used to reassess the numbers and classifications of staff required to conduct the activities of the State Bar’s disciplinary activities. The review shall cover the calendar years of 1998, 1999, and 2000. The State Bar shall submit a report to the Legislature on its review of workload standards by June 30, 2001.”

B. OVERVIEW OF FUNDING FOR STATE BAR DISCIPLINARY ACTIVITIES

The State Bar's funding situation differed significantly for each of the years designated for this report. The funding situation directly impacted the level of staffing which the State Bar could allocate to its disciplinary activities in 1998, 1999, and 2000. Of the three years, the numbers and classifications of staff in 2000 provide the best and most complete guidance for allocation of resources to disciplinary activities. Moreover, although Senate Bill 1420 specifies the years 1998 through 2000 shall be reviewed, 1997 was the most recent year in which the State Bar was at full operation. For this reason, information relating to 1997 is also presented.

In 1997, the State Bar voluntarily reduced authorized dues paid by members by \$20.00. Active members in practice three years or more paid \$458.00. Members in practice between one and three years paid \$390.00, and first year members paid \$359.00. These amounts were \$20.00 less than those authorized by the Legislature.

In the Fall of 1997, the Governor vetoed the Bar's annual membership fee bill for 1998. The vetoed legislation would have authorized the State Bar to collect a total of \$458.00 per active member in annual membership dues. After the veto, two pre-existing statutes allowed the State Bar to collect \$27.00 per active member for the discipline system and a third statute authorized \$40.00 per active member in restricted funds for the Client Security Fund ("CSF") (Business and Professions Code Sections 6140.55, 6140.6, and 6140.9). The State Bar began 1998 at full staffing, although it imposed a freeze on the filling of any vacant positions. By June 26, 1998, however, the State Bar ran out of funds. The State Bar reduced its disciplinary staff by approximately 90 percent, keeping a skeletal staff of only 22 employees in its investigation and prosecution office, the Office of the Chief Trial Counsel ("OCTC"), and seven staff employees in its adjudicatory office, the State Bar Court. The adjudicators themselves, eight full-time professionalized judges, continued to work (deferring two-thirds of their salaries). CSF, with its full funding from \$40.00 per member, was fully staffed throughout 1998.

For 1999, the California Supreme Court ordered all active attorneys to pay a special assessment of \$173.00 to fund the discipline system at a level sufficient to reopen. The special assessment, along with \$27.00 per active member authorized by the separate statutes, provided approximately 65 percent of the resources historically available to fund discipline activities by OCTC and the State Bar Court. The Supreme Court appointed a Special Discipline Master, retired Justice Elwood Lui, to oversee collection and disbursement of the special

assessment. CSF, with \$40.00 per member in restricted funds, was authorized for a full staffing level.

For the year 2000, the Legislature authorized the State Bar to collect annual membership fees in a total amount of \$395.00. OCTC's staffing rose to approximately 90 percent of 1998's pre-lay off level. State Bar Court's staff did not increase because the caseload did not require it. CSF received \$40.00 per member in funding. In November 1999, CSF had decreased its staff from fourteen to nine positions reflecting decreased staffing needs. In 2000, CSF underwent a reorganization to permanently maintain its staff at nine positions.

C. THE DISCIPLINARY ACTIVITIES OF THE STATE BAR'S OFFICES

1. *Office of the Chief Trial Counsel.*

OCTC is organized into an Intake Unit and an Enforcement Unit.

The Intake Unit is the public's initial contact point with the discipline system. The vast majority of initial communications are made through a toll-free 800 line which is a "self-help" voice mail and phone tree system on which callers resolve problems on their own and/or access complaint analysts¹. The public may also send written communications to the State Bar. When a communication is designated for evaluation to determine whether any action by OCTC is warranted, an "inquiry" is opened and analyzed by complaint analysts and staff attorneys. Work on inquiries frequently involves oral and written follow up with the complainant as well as oral and/or written contact with the accused attorney.

Intake also receives "reportable actions" which the Legislature requires

¹ Complaint analysts are specially trained to work with callers on the 800 line. They spend half their time answering calls. When not on telephone duty, they work on cases generated by their telephone work and on other written communications received by Intake.

courts, insurers, financial institutions and attorneys to make to the State Bar². In 1997 the State Bar received 4,789 reportable actions. In 1998, 1999, and 2000, the State Bar received between 4,175 and 5,563 reportable actions.

When an inquiry or reportable action warrants an investigation of a State Bar member because alleged misconduct, if proven, may result in discipline, a “complaint” is opened for investigation.

Another function of the Intake Unit grows out of OCTC’s recognition that many matters entering the system do not rise to a level warranting formal investigation and prosecution. This very important function is to identify, at the earliest time, cases for appropriate non-disciplinary disposition. This allows low priority matters to be given prompt resolution, cleared out of the system with a minimum use of investigative and attorney resources, and allows those resources to be focused on the most serious matters.

The Enforcement Unit’s basic function is investigation and prosecution of complaints containing allegations of misconduct by members of the State Bar. In a typical year, between 5,000 and 6,000 complaints have been investigated. Staff attorneys oversee the investigations which are actually conducted by professional investigators. When an investigator completes an investigation, the assigned attorney determines the appropriate resolution. The range of resolutions includes outright dismissal, alternative dispositions which amount to closures, stipulations for discipline prior to the filing of formal charges, and filing charges to initiate formal disciplinary proceedings.

Although most prosecuted matters are based upon an investigated complaint, Enforcement attorneys prosecute other formal disciplinary matters in the State Bar Court. These are based on a pre-existing judgment or order against the accused member. Examples of these are criminal conviction proceedings and proceedings based on violations of probation conditions imposed in prior disciplinary matters.

OCTC has offices in Los Angeles and San Francisco. The Intake Unit is located solely in Los Angeles. Approximately three-fourths of Enforcement Unit

² Courts and insurers must report specified types of civil activities by attorneys. Financial institutions must report insufficient fund activity in client trust accounts. Attorneys have self reporting requirements for certain actions. (Business and Professions Code Sections 6068(o), 6086.7, 6086.8, and 6091.1)

staff are located in Los Angeles, and one-fourth are located in San Francisco.

2. *The State Bar Court.*

The State Bar Court is the administrative arm of the California Supreme Court in the adjudication of disciplinary and regulatory matters involving California attorneys. The majority of State Bar Court's disciplinary proceedings arise from complaints by the public, criminal convictions of attorneys, and violations of conditions imposed on disciplined attorneys. The State Bar Court also hears regulatory matters. Examples of regulatory proceedings are admission cases involving the moral character of the applicant, reinstatement proceedings for former members who resigned with charges pending or were disbarred, and proceedings to involuntarily place a member on inactive status.

The State Bar Court has authority to impose private and public reprovls on attorneys. The State Bar Court also recommends more severe discipline, such as suspension or disbarment, to the California Supreme Court. The Supreme Court either accepts the State Bar Court's recommendation, modifies it, or returns the matter to the State Bar Court for further hearing.

The State Bar Court is comprised of five full-time judges in its Hearing Department and three judges in the appellate Review Department³. In addition to conducting hearings and conferences after formal charges are filed, Hearing Department judges conduct Early Neutral Evaluation ("ENE") conferences which are aimed at evaluating and, if appropriate, resolving disciplinary proceedings prior to the filing of formal charges.

In 2000, the State Bar Court entered its second decade as the nation's first and only full-time attorney disciplinary and regulatory court. Prior to the professionalization of the State Bar Court in 1991, approximately 40 percent of the cases heard by the California Supreme Court involved attorney disciplinary and regulatory matters. Since 1991, only eight disciplinary and regulatory matters heard by the Review Department have required a hearing and decision by the Supreme Court.

The State Bar Court is located in Los Angeles and San Francisco. Three

³ In a cost saving measure implemented by the State Bar Court in 1995, two Review Department judges work and are compensated at 60 percent of full-time.

Hearing Department judges are situated in Los Angeles, two are in San Francisco. The Review Department alternates its calendar of hearings between the two locations.

3. *Client Security Fund.*

CSF was established by legislation in 1972 in recognition that disciplinary measures, as well as civil and criminal proceedings, were often insufficient remedies to alleviate pecuniary losses caused by a lawyer's dishonest conduct in the practice of law (Business and Professions Code Section 6140.5). CSF is designed as a remedy for consumers of legal services in addition to, but separate from, discipline. The fund protects the public by focusing on individual victims.

CSF reimburses victims up to \$50,000 for losses due to attorney theft. Since its inception, CSF has reimbursed applicants over \$45,000,000. CSF staff are located in the Los Angeles office of the State Bar.

II. OCTC ACTIVITIES AND STAFFING IN 1997, 1998, 1999, AND 2000

1997 was the last year in which the State Bar was as full operation. Therefore, for reference, the discussion of OCTC disciplinary activities and staffing begins with a review of the calendar year 1997.

A. ANNUAL YEAR 1997

In 1997, OCTC had 285 positions. Sixty one positions were in the Intake Unit. The Enforcement Unit had 197 positions. A third small unit known as the Quality Assessment and Assurance Unit ("QAA"), as well as the administrative

unit of the Chief Trial Counsel, had 27 employees. The 285 positions were comprised of 62 staff attorneys, 73 investigators, 18 complaint analysts, 17 paralegals, 5 probation monitors, 92 support staff, and 16 managers.

1. *Intake Unit.*

Intake's primary function is to receive and evaluate communications filed against attorneys. Additionally, in 1997 Intake monitored probation conditions for approximately 1,000 disciplined attorneys; operated State Bar Ethics School and Client Trust Accounting School; received and processed reportable actions; and operated the Attorney Substance Abuse program, the Law Office Management Assistance pilot program, the Alternative Dispute Resolution program, and a Civility program. Complaints alleging unauthorized practice of law by non-attorneys and by current or former attorney members were also evaluated. Some of these minor misconduct programs existed as part of Intake's responsibility in identifying cases for prompt disposition.

In 1997, Intake had seven staff attorneys and 18 complaint analysts working on communications, inquiries and reportable actions. The following table shows the numbers of these items worked on by these staff members:

Table 1

Matters Worked by Intake Unit's 18 Complaint Analysts and 7 Attorneys

Year 1997

<u>Type of Contacts</u>	<u>Number</u>
Total Communications	138,239
Inquiries opened	15,164
Reportable Actions opened	4,789

In December 1997, complaint analysts were working on 1,514 matters. The average complaint analyst had a caseload of 84 inquiries. The staff attorneys oversaw the entire process including review of decisions to close or process communications as complaints for investigations.

2. *Enforcement Unit.*

In 1997, Enforcement had 53 staff attorneys, 65 investigators, 14 paralegals, and 55 administrative and clerical support staff. Eight managers oversaw the operation.

There were 5,811 inquiries and reportable actions which advanced to complaint status and were transferred to Enforcement. Additionally, Enforcement had 2,693 open investigations pending from 1996. With the approval of staff attorneys, investigators dismissed 3,438 complaints. The table below shows the number of open investigations assigned to investigators, and the number of complaints dismissed, in 1997:

Table 2

Complaint Assignments and Dismissals re Enforcement Unit's 65 Investigators

Year 1997

<u>Type of Complaint</u>	<u>Number</u>
New complaints opened from Inquiries/RAs	5,811
Complaints pending from 1996	2,693

In addition to their complaint assignments, investigators provided investigative assistance for regulatory and disciplinary proceedings as needed. Moral character cases and reinstatement cases are two typical proceedings which can require over 100 hours of investigative time during the pendency of the proceeding at the hearing level. In 1997, there were 1,129 regulatory and disciplinary proceedings filed in State Bar Court.

The Enforcement Unit's teams were comprised of attorneys, investigators, paralegals and support staff. When the investigator completed an investigation, the assigned staff attorney determined the disposition of the complaint. Attorneys were assigned to litigate disciplinary and regulatory matters as well as to oversee the

investigation of complaints. For their combined duties, the 53 staff attorneys had the following dispositions in 1997⁴:

Table 3

⁴ The table identifies a number of dispositions. *Warning letters* issued when there was probable violation that was minimal in nature, did not involve significant harm to the client or public, and did not involve misappropriation of client funds. *Directional letters* issued where there was a potential future violation if the conduct was not corrected. The reported numbers for these include letters issued by both Enforcement Unit and Intake Unit attorneys. An *Agreement in Lieu of Discipline* is a formal agreement between the member and OCTC in lieu of disciplinary prosecution. It is provided for in Business and Professions Code Sections 6068(l) and 6092.5(i). *Termination* occurs for complaints or disciplinary proceedings which are closed due to an external cause such as death of the member, disbarment in a separate matter, or resignation with charges pending. A *Notice of Disciplinary Charges* is a document filed in State Bar Court which contains formal charges against a member.

Dispositions of Complaints and Other Matters by Enforcement Unit's
53 Staff Attorneys

Year 1997

<u>Type of Disposition</u>	<u>Number</u>
Warning and Directional Letters	1,516
Agreement in lieu of discipline	138
Termination	810
Resignation with charges pending	115
Stipulated discipline filed*	99
Notice of Disciplinary Charges filed *	584

In December 1997, there were 4,118 complaints pending with investigators. The caseload of the average investigator was 63 investigations. There were 1,970 complaints pending with staff attorneys for notice drafting and other pre-filing work. Staff attorneys also had 1,431 litigation matters pending in the Hearing Department and 109 matters at the Review Department. The average staff attorney's litigation caseload, both pre-filing and in State Bar Court, was 66 matters.

3. *Quality Assurance and Assessment.*

The Quality Assurance and Assessment Unit was implemented in 1996 to consider requests for review by complainants, assess and report on the functions and activities of OCTC, and interact with a now-sunsetted Discipline Audit Panel. QAA provided an internal review process for dissatisfied complainants who requested review of decisions closing their complaints. In the internal review process, a different DTC from the DTC who approved the closure was assigned to conduct an independent review of the closing decision. A second level of review by a manager was possible for consumers who remained

dissatisfied after independent review. QAA staff conducted a final internal review as requested by dissatisfied complainants.

In 1997, OCTC processed approximately 660 requests for review by dissatisfied complainants. Of these 660 requests, 196 were pursued to final review by QAA staff. Complainants who continue to be dissatisfied sought redress by the California Supreme Court through filing a verified accusation against the respondent lawyer. There were 18 such petitions filed.

B. JANUARY 1, 1998 TO JUNE 26, 1998.

OCTC's disciplinary activities and staffing for 1998 are reported in two increments, one for the pre-lay off period of January 1, 1998 to June 26, 1998, and the other for the post-lay off period of June 26, 1998 to December 31, 1998. The second half of 1998 was so uniquely different from the first half that separate reporting appears appropriate.

OCTC began 1998 with 285 positions, the same number as it had in 1997. Sixty one positions were in the Intake Unit. The Enforcement Unit had 198 positions. QAA and the administrative unit of the Chief Trial Counsel, had 26 employees. The 285 positions were comprised of 62 staff attorneys, 73 investigators, 18 complaint analysts, 17 paralegals, 5 probation monitors, 92 support staff, and 16 managers.

1. *Intake Unit.*

In the first half of 1998, Intake performed its primary function of receiving and evaluating communications filed against attorneys. Additionally, Intake monitored probation conditions for disciplined attorneys; operated State Bar Ethics School and Client Trust Accounting School; received and processed reportable actions; and operated the Attorney Substance Abuse program, the Law Office Management Assistance pilot program, the Alternative Dispute Resolution program, and the Civility program. Complaints alleging unauthorized practice of law by non-attorneys and by current or former attorney members were also evaluated.

Intake had seven staff attorneys and 18 complaint analysts working on

communications, inquiries and reportable actions. The following table shows the numbers of these items worked on by these staff members:

Table 4

Matters Worked by Intake Unit's 18 Complaint Analysts and 7 Attorneys

January 1, 1998 to June 26, 1998

<u>Type of Contacts</u>	<u>Number</u>
Total Communications	49,662
Inquiries opened	8,040
Reportable Actions opened	2,664*
* In 1998, attorney self reports, court and insurer reports, were only recorded by OCTC through May 1, 1998. A total of 4,260 bank reports re insufficient funds in trust accounts were recorded throughout all of 1998, with no break out of reports recorded before or after May 1, 1998. For purposes of this report, it is assumed that half of the recorded bank reports (2,130) were recorded through June 26, 1998.	

In May 1998, complaint analysts were working on 1500 inquiries. Accordingly, the average complaint analyst had a caseload of 83 inquiries. The role of staff attorneys was to oversee the entire process including review of decisions to close or process communications as complaints for investigation.

2. Enforcement Unit.

In the first half of 1998, Enforcement had 53 staff attorneys, 65 investigators, 14 paralegals, and 58 administrative and clerical support staff. Eight managers oversaw the operation.

There were 1,876 inquiries and reportable actions which advanced to complaint status and were transferred to Enforcement. Additionally, Enforcement had 2,693 open investigations pending from 1997. With the approval of staff attorneys, investigators dismissed 2,861 complaints. The table below shows the number of open investigations assigned to investigators, and the number of complaints dismissed, in the first half of 1998:

Table 5

Complaint Assignments and Dismissals re Enforcement Unit's 65 Investigators

January 1, 1998 to June 26, 1998

<u>Type of Complaint</u>	<u>Number</u>
New complaints opened from Inquiries/RAs	1,876
Complaints pending from 1997	2,693
Complaint dismissals	2,861

The Enforcement Unit's attorneys were assigned to litigate disciplinary and regulatory matters as well as to oversee the investigation of complaints. For their combined duties, the 53 staff attorneys had the following dispositions in 1998:

Table 6

Dispositions of Complaints and Other Matters by Enforcement Unit's
53 Staff Attorneys

Year 1998⁵

<u>Type of Disposition</u>	<u>Number</u>
Warning and Directional Letters	629
Agreement in lieu of discipline	82
Termination	523
Resignation with charges pending	51
Stipulated discipline filed*	44
Notice of Disciplinary Charges filed *	248

⁵ Due to lack of resources, OCTC did not maintain separate statistics for dispositions by the skeletal staff in the latter half of 1998. The statistics listed in the Table are for the entire year of 1998.

As an example of their caseloads, in May 1998 there were 3,362 complaints pending with investigators. The average investigator's caseload was 52 matters. There were 1,634 complaints pending with staff attorneys for notice drafting and other pre-filing work. Staff attorneys also had 1200 litigation matters pending in the Hearing Department and 72 matters at the Review Department. The average staff attorney's litigation caseload, both pre-filing and in State Bar Court, was 55 matters.

3. *Quality Assurance and Assessment.*

QAA provided the internal review process for dissatisfied complainants, assessed and reported on the functions and activities of OCTC, and interacted with the now-sunsetted discipline audit panel. QAA's operation was suspended in June 1998 and is moribund.

C. JUNE 26, 1998 TO DECEMBER 31, 1998

OCTC had made exigency plans in early 1998 to preserve important core functions and keep key staff in place to help rebuild the discipline enforcement system whenever funding was secured. During the lay off period (June 26, 1998 to March 1, 1999), there were 22 staff members in OCTC. They provided skeletal services and focused on processing and supporting only the most egregious cases already set for trial in State Bar Court. The 22 staff members included a mix of managers, litigation attorneys, investigators, paralegals, secretaries and clerical staff. There was no distinguishable Intake Unit although a minimal level of work was performed to merely receive and warehouse communications.

After June 26, 1998, OCTC suspended operation of the toll-free 800 complaint hotline and, instead, a voice mail message informed callers the State Bar discipline operations was basically suspended but would accept new written complaints. The minor misconduct programs were discontinued. Staff received, recorded and merely warehoused, without screening, approximately 3,000 new written complaints. Approximately 350 criminal cases were still monitored and convictions involving moral turpitude, felonies, and summary disbarment were forwarded to State Bar Court. Probationers were not supervised, although they were informed that self-reporting and compliance were still required. Approximately 2,130 bank record reports regarding insufficient checks on client

trust accounts were received. Other reportable actions, such as sanctions and malpractice claims, were received and stored without any computer record made of their receipt.

The vast majority of investigations were suspended and matters ready to be filed in the State Bar Court were abated. There were no new filings of disciplinary charges except for the most egregious acts of public harm. Seven attorneys and two managers handled the cases which were already set for trial, processed moral character cases to the extent funding was provided by the Committee of Bar Examiners, and processed conviction matters in State Bar Court.

In light of the bare minimum of staff to provide essential services, no regular statistics were maintained in the latter half of 1998. Therefore, no reliable or accurate caseload statistics were attainable or captured for the balance of 1998.

D. ANNUAL YEAR 1999

With funding from the special assessment ordered by the Supreme Court in December 1998, the discipline system began “ramping up” on March 1, 1999. Although OCTC was funded initially at 65 percent of pre-shut down levels, only 50 percent of the former staff returned to work.

In early 1999, in collaboration with Special Discipline Master Lui, OCTC developed a system of prioritizing work to ensure that it concentrated its resources only on complaints with the greatest risk of client and public harm. Returning OCTC staff reviewed the entire inventory of approximately 4,400 unresolved matters pending throughout the system at a pre-filing stage and 3,000 new unscreened matters in accordance with those priorities to ensure that OCTC addressed the most serious consumer complaints first. These unresolved matters included, in Los Angeles alone, 900 matters which awaited the drafting of formal disciplinary charges.

To reduce the huge inventory of new and pending complaints, OCTC exercised a renewed sense of prosecutorial discretion through implementation of the new priorities which were approved by the Board of Governors of the State Bar. Many minor matters that the system had historically investigated were closed and OCTC reduced by 50 percent access on the 800 line to complaint

analysts⁶. In 1999, the reduced operation of the 800 lines produced approximately 750 new inquiries per month, roughly one-half the normal number of inquiries. Additionally, OCTC referred non-attorney unauthorized practice of law investigations and prosecutions to local district attorneys, and received but did not record or evaluate reportable actions other than bank reports of insufficient activity in client trust accounts. OCTC declined prosecution of allegations which did not involve client harm, and eliminated directional and warning letters in the minor misconduct program in favor of a standardized “resource letter” which directed attorneys to programs such as Ethics School and Client Trust Account School to help them avoid future ethical problems. OCTC did not reinstate other minor misconduct programs.

To tackle the huge inventory of investigation complaints, Enforcement initially tried two different approaches and later compared them for their relative effectiveness. In Los Angeles, investigation caseload levels were kept within traditional parameters of between 35 to 45 matters per investigator. In early 1999, the average investigator case load in Los Angeles was approximately 39 cases. The Los Angeles approach maintained an artificially low investigative caseload and created an inventory “tank” so that investigations were assigned to investigators piecemeal to maintain a certain level. In contrast, in San Francisco, all of the inventory of investigation complaints were assigned to eight investigators. Average case loads of 78 cases were normal. During the year, it was determined that the San

Francisco caseload of 78 matters per investigator was simply too high. There was no economy in scale and investigators tended to focus on the most serious respondents with the most number of open complaints. The result was that matters of equal seriousness involving respondents with fewer complaints did not necessarily move to the top of the activity list.

Initially, one of the teams in Los Angeles was tasked solely with drafting notices of disciplinary charges. The results were mixed.

As a result of its initial experience, during 1999, OCTC realigned its investigation and prosecution staff in the Los Angeles Enforcement Unit into a hybrid of generalized and specialized units. It was determined that greater case processing efficiency could be achieved by organizing a portion of the Los Angeles

⁶ Fifty percent reduction meant complaint analysts worked on the 800 line four hours a day, five days a week. The balance of their time was spent on file review and analysis.

workforce into vertical litigation teams in which each team specialized in different kinds of proceedings, case types, or priority. This included a more balanced approach in order to regularize drafting of notices of disciplinary charges and to ensure a steady stream of new filings so charged misconduct would not be stale or diminished by delay. The smaller San Francisco workforce remained organized in general litigation vertical prosecution teams.

OCTC reopened in March 1999 with 214 authorized positions. These were comprised of 7 managers, 50 staff attorneys, 48 investigators, 15 complaint analysts, 17 paralegals, and 77 other support staff. Although 142 staff members were on the recall list, 50 percent of the former staff did not return. Throughout 1999, senior staff members interviewed, hired, and trained a significant number of new staff at all levels. This continued into most of the year 2000. The serious loss of experienced staff made the 1999 recovery even more remarkable.

1. *Intake Unit.*

When the State Bar's discipline system reopened in March 1999, most of the suspended minor misconduct programs were not reinstated.

In 1999, the Intake Unit was reorganized into five attorneys and 15 complaint analysts designated to work on communications, inquiries and reportable actions. The following table shows the work performed by complaint analysts and staff attorneys on these items:

Table 7

Matters Worked by Intake Unit's 15 Complaint Analysts and 5 Attorneys

Year 1999

<u>Types of Contacts</u>	<u>Number</u>
Total Communications*	91,000
Inquiries	8,405
Reportable actions opened	5,563
* This number is averaged for the year. Complete call records were not available	

At the end of December 1999, complaint analysts were working on 1654 inquiries. Thus, the average complaint analyst carried 110 inquiries. The number of inquiries worked by complaint analysts had reached a high of 3663 in April 1999. Staff attorneys oversaw the entire process including review of decisions to close or process communications as complaints for investigation.

2. Enforcement Unit.

In 1999, the Enforcement Unit was authorized 45 staff attorneys and 48 investigators whereas before the shut down in 1998 the Enforcement Unit was authorized 53 staff attorneys and 65 investigators.

There were 2,055 inquiries and reportable actions which advanced to complaint status. There were 2,426 open investigations pending from 1998. With the approval of their staff attorneys, investigators dismissed 2,355 complaints. The following table shows the number of open investigations assigned to investigators, and the number of complaints dismissed, in 1999:

Table 8

Complaints Assignments and Dismissal re Enforcement Unit's 48 Investigators

Year 1999

<u>Type of Complaint</u>	<u>Number</u>
New Complaint opened from Inquiries/RA	2,055
Complaints pending from 1998	2,426
Complaint dismissals	2,355

In 1999, an additional step was inserted in the pre-litigation process. Early Neutral Evaluation (“ENE”) conferences began to be conducted by the hearing judges of the State Bar Court. The ENE conference occurred immediately prior to the filing of formal disciplinary charges. Statistics on the number of accused attorneys involved in ENE conferences began to be tracked. The following chart reflects the dispositions of discipline cases by staff attorneys:

Table 9

Disposition of Complaints and Other Matters by Enforcement Unit’s
45 Staff Attorneys

Year 1999

<u>Type if Disposition</u>	<u>Number</u>
Early Neutral Evaluations	33
Warning and Directional Letters	27
Resource Letters	413
Agreements in lieu of discipline	19
Terminations	340
Resignations with charges pending	68
Stipulated discipline filed*	36

In late December 1999, there were 2,834 complaints assigned to investigators. The average investigator carried 60 investigations and provided investigative assistance to staff attorneys in litigation proceedings. In addition

to investigation oversight responsibilities, staff attorneys had 923 complaints pending in pre-filing status waiting for notice drafting and other work up. Staff attorneys also were assigned to 708 matters in the Hearing Department and 69 matters in the Review Department. Thus, in late December 1999 the average staff attorney's litigation caseload, both pre-filing and in State Bar Court, was 38 matters.

D. ANNUAL YEAR 2000

In the last quarter of 1999, OCTC determined that it needed additional staff. There were simply too many investigation matters with too few investigators. Furthermore, there were over 1,000 matters awaiting the drafting of a notice of disciplinary charges and conferences with the respondent attorney prior to filing the notice. Therefore, OCTC obtained authorization from the Supreme Court's Special Discipline Master and the Board of Governors for 35 additional staff members, including 16 investigators and 10 staff attorneys. Interviewing, hiring, and training of new staff occurred throughout the year 2000. Accordingly, by the end of 2000, OCTC had 255 authorized positions comprised of 12 managers, 62 Intake and Enforcement staff attorneys, 62 investigators, 18 complaint analysts, 18 paralegals, and 83 other technical, secretarial and clerical support staff.

In 1999 and 2000, pursuant to recommendations made by Special Discipline Master Lui, the State Bar made a major effort to update its technology and computer systems which had been installed in the mid 1980s. Among other advances, the State Bar's Internet web site (www.calsb.org) was expanded to contain information about the attorney discipline system, and to permit downloading of the attorney complaint form.

In the year 2000, OCTC implemented a process for random review and audit of resolved files to verify that OCTC policies, procedures, case law and standards were being followed by staff. The first review involved 330 case files within Intake and Enforcement. It was conducted by supervising staff attorneys and attorney managers. The results were provided to the California State Auditor as part of that Office's study of the State Bar in 2001.

To replace the function performed by the defunct Quality Assurance and Assessment Unit, OCTC provided an internal review process for complainants who requested a "second look" at the closure of their complaint by Intake and Enforcement attorneys who were not involved in the initial closure. In 2000, there were 653 requests for a second look. Of these, 54 were reopened after the

review process. Intake forwarded five complaints to Enforcement and at least one of these resulted in discipline.

1. *Intake Unit.*

The Intake Unit had six attorneys and 18 complaint analysts who received and evaluated communications, inquiries and reportable actions. Intake continued to utilize the priority system which was initiated in March 1999. Because Intake forwarded only the most serious allegations, a greater percentage of relatively minor allegations remained in Intake for resolution than was the practice before the shut

down in June 1998. The following table shows the numbers of the communications, inquiries and reportable actions worked on by Intake staff members in 2000:

Table 10

Matters Worked by Intake Unit's 18 Complaint Analysts and 6 Attorneys

Year 2000

<u>Type of Contacts</u>	<u>Number</u>
Total Communications	109,259
Inquiries opened	10,846
Reportable Actions Opened	4,175

In January 2000, the 18 complaint analysts were working on 1,699 inquiries. By late December 2000, the number of open inquiries dropped to 1,232 inquiries, for an average caseload of 70 inquiries per complaint analyst.

2. *Enforcement Unit.*

In 2000, the Enforcement Unit had 56 staff attorneys and 62 investigators. There were 4,033 inquiries and reportable actions that advanced to complaint status, as well as 2,834 complaints pending from the end of 1999. Investigators closed 2,252 complaints. The table below shows the number of open investigations assigned to investigators, and the number of complaints closed by them, in 2000:

Table 11

Complaint Assignments and Dismissals re Enforcement Unit's 62 Investigators

Year 2000

<u>Type of Complaint</u>	<u>Number</u>
New Complaints opened from Inquiries/RAs	4,033
Complaints pending from 1999	2,834
Complaints dismissed	2,252

Staff attorneys continued to oversee investigations as well as maintain litigation responsibilities for matters filed in the State Bar Court. The following table reflects the disposition of matters assigned to staff attorneys:

Table 12

Dispositions of Complaints and Other Matters by Enforcement Unit's
56 Staff Attorneys

Year 2000

<u>Type of Disposition</u>	<u>Number</u>
Early Neutral Evaluation conferences	53
Resource Letter	401
Agreement in lieu of discipline	35
Termination	482
Resignation with charges pending	93
Stipulated discipline filed*	221
Notice of Disciplinary Charges filed*	383

In December 2000, there were 2,803 complaints open in Enforcement. The caseload of the average investigator was 45 investigations plus investigative assistance for litigation matters. Staff attorneys were assigned to 1,026 complaints awaiting notice drafting, 840 proceedings in State Bar Court including 71 matters in the Review Department, in addition to their oversight responsibilities for investigations. The litigation caseload, pre-filing as well as matters in litigation, for the average litigation staff attorney was 33 matters.

III. STATE BAR COURT ACTIVITIES AND STAFFING IN 1997, 1998, 1999, AND 2000

1997 was also the State Bar Court's last full operational year. Thereafter, in 1998, 1999, and 2000, the State Bar Court went through a lay off and re-hiring situation similar to that of OCTC.

In 1997, State Bar Court had 52 authorized staff positions. At the end of 1997, there were 47 filled positions in State Bar Court.

State Bar Court began 1998 with 52 authorized staff positions in addition to the eight judges of the State Bar Court. By June 26, 1998, 46 positions in State Bar Court remained filled. During the shut down period, all of the State Bar Court judges continued to work (deferring two-thirds of their salaries) in order to dispose of cases that were under submission for a written decision and to hold hearings on cases that were set for trial before the end of 1998. Just as OCTC terminated approximately 90 percent of its staff in June 1998, State Bar Court laid off all but seven of its staff, i.e., approximately 85 percent. Since OCTC's remaining 22 employees were unable to investigate complaints or to file a significant number of new proceedings in the State Bar Court, when the discipline system reopened on March 1, 1999, the State Bar Court correctly anticipated that there would be a period of time before OCTC could file a significant number of new proceedings. Accordingly, unlike OCTC which immediately brought back all laid off staff who wished to return, in 1999 and 2000 the State Bar Court filled positions only as caseloads required it. In the first quarter of 1999, the Supreme Court's Special Discipline Master and the Board of Governors approved the State Bar Court's proposed staff reorganization plan to reduce staff from the 52 positions authorized in 1998 to 37 positions. Although it is authorized for 37 staff members, by the end of the year 2000, State Bar Court had filled only 26 of its staff positions.

Staff in the State Bar Court provide court clerk, legal, clerical, administrative and managerial support to all court activities. Court administration includes budget preparation, development of case management and other automated systems, publication of the rules of procedure and the rules of practice, and publication of the *California State Bar Court Reporter* which reports published decisions of the Review Department. Court clerk assignments include assisting with calendaring matters, filing and serving pleadings, courtroom support, transmittals to the Supreme Court, maintaining official records, and compiling and publication of statistics. Court counsel assignments include providing legal advice, research, and case analysis, assisting in drafting decisions, involvement in revisions to the rules of procedure and rules of practice, and training of new judges.

In order to assess its performance in comparison with other trial courts, in 1996 the State Bar Court had begun utilizing the *Trial Court Performance Standards* and the *Appellate Court Performance Standards* issued by the National Center for State Courts. In terms of case processing and pendency, the trial

court standards

recommend that 90 percent of all cases should be disposed of within one year, 95 percent should be disposed of within 18 months, and 100 percent should be disposed of within two years. Prior to 1998, the average pendency of cases in the State Bar Court's Hearing Department had been approximately seven to eight months, however, there was difficulty in the timely disposition of complex, voluminous and/or highly contested cases. The funding crisis of 1998 caused the State Bar Court to suspend utilization of the standards. In 2000, the State Bar Court reaffirmed its goal of complying with the applicable provisions of the standards.

A. ANNUAL YEAR 1997

In 1997, the State Bar Court began implementing new case flow management systems and calendaring techniques in an effort to dispose of cases more quickly. Techniques included double and triple setting court events.

In 1997, there were 1,129 new disciplinary and regulatory cases filed in the State Bar Court. During 1997, the State Bar Court made 462 interim dispositions involving disciplinary and regulatory matters, and 792 final dispositions. The following table shows the filings and dispositions in 1997:

Table 13

State Bar Court Filings and Dispositions

Year 1997

<u>Filings and Dispositions</u>	<u>Number</u>
Disciplinary matters filed	961
Regulatory matters filed	168
Disciplinary interim dispositions	323
Regulatory interim dispositions	139
Disciplinary final dispositions	621

Disciplinary proceedings that involve a level of discipline greater than a reproof must be ordered by the California Supreme Court. This process involves the adoption or review of a recommendation that has been made by the State Bar Court to the Supreme Court. In 1997, the California Supreme Court issued 642 final dispositions, including 76 disbarments, 116 resignations with charges pending, and 405 suspensions.

Thus, the total number of final disciplinary and regulatory dispositions by the State Bar Court and the Supreme Court in 1997 was 1,434 cases.

During 1997, State Bar Court hearing judges filed a total of 259 decisions in disciplinary and regulatory proceedings, for an average of 52 decisions per judge. Hearing judges reviewed, modified (as appropriate) and approved the disposition of an additional 538 cases through written stipulations as to facts, conclusions of law and recommended discipline, for an average of 108 stipulation dispositions per hearing judge. In addition, the hearing judges disposed of 276 other proceedings through final orders, for an average of 55 cases per judge. The three-member Review Department filed 50 opinions in cases on review and acted upon 323 matters delegated to the Review Department by the Supreme Court pursuant to rule 951 of the California Rules of Court.

B ANNUAL YEAR 1998

Anticipating the potential shut down of most of the discipline system, in June 1998 the presiding judge of the State Bar Court issued an order setting forth standards for abating proceedings and for relief from abatement. Each hearing judge reviewed his or her cases to determine which should be abated. The standards provided that cases already taken under submission for written decision or set for trial before the end of 1998, or meeting other criteria, would not be abated. The Review Department also was given similar standards for determining whether cases would be abated or not.

During the shut down (June 26, 1998 to March 1, 1999), the State Bar Court significantly reduced its caseload. The State Bar Court judges disposed of 199 cases through issuance of 126 written decisions or disposition orders and 73 orders approving stipulated dispositions. State Bar Court judges also held hearings in 83 proceedings.

In 1998, new case filings in State Bar Court totaled 531, which is less than half of the typical number in the three prior years and less than half of the 1,129 new cases filed in 1997. There were 280 interim dispositions involving disciplinary and regulatory matters, whereas in the three prior years there had been 400 to 462 interim dispositions. The number of final dispositions by the State Bar Court was 602, whereas in the three prior years the number had ranged between 681 and 792. The following table shows the filings and dispositions in 1998:

Table 14

State Bar Court Filings and Dispositions

Year 1998

<u>Filings and Dispositions</u>	<u>Number</u>
Disciplinary matters filed	432
Regulatory matters filed	99
Disciplinary interim dispositions	159
Regulatory interim dispositions	121
Disciplinary final dispositions	490

In 1998, the California Supreme Court issued 680 final dispositions. These included 96 disbarments, 54 resignations with charges pending, and 487 suspensions.

Thus, the total number of final disciplinary and regulatory dispositions by the State Bar Court and the Supreme Court in 1998 was 1,282 cases.

As indicated above, as part of the State Bar Court's strategy for dealing with the lay off of State Bar employees in June 1998, the State Bar Court judges attempted to hear and take as many cases under submission as possible prior to June 26, 1998 with the expectation that the judges could produce their decisions with minimal staff assistance. As a result of this strategy, during 1998, the State Bar Court hearing judges filed 208 decisions in disciplinary and regulatory proceedings, for an average of 42 decisions per judge. Hearing judges also reviewed, modified (as appropriate) and approved 434 written stipulations as to facts, conclusions of law and recommended discipline, for an average of 87 stipulation dispositions per judge. The hearing judges disposed of an additional 160 proceedings through final orders, for an average of 32 cases per judge. The Review Department filed 34 opinions in cases on review and acted upon 159 matters delegated to it by the Supreme Court pursuant to rule 951 of the California Rules of Court.

C. ANNUAL YEAR 1999

By March 1999, the State Bar Court's pending caseload was dramatically reduced as a result of OCTC's inability to investigate and file new proceedings during the lay off period and the State Bar Court judges' efforts during the lay off period to file decisions in submitted matters and to hear and decide the most serious cases pending. This resulted in a significant reduction in the number of cases available for disposition.

After the discipline system reopened on March 1, 1999, the State Bar Court presiding judge issued an order terminating the abatement standards and establishing procedures for parties to make a motion for termination of abatement of individual cases. This approach was taken because both OCTC and the State Bar Court were in the process of recalling laid off employees and hiring new employees, and OCTC did not have sufficient staff to immediately recommence the processing of all abated cases. By the end of 1999, many abated cases had been reopened and calendared for conference or trial.

ENE conferences were implemented. The purpose of ENE conferences is to evaluate and, if appropriate, resolve disciplinary charges prior to the filing of formal charges. Hearing Department judges conducted the ENE conferences.

In 1999, State Bar Court received authorization for 37 staff members. Since staff positions were filled only as the caseload required it, only 26 positions were filled by the end of 1999. These included 12 case administrator and clerk positions, 3 staff counsel positions, 6 technical and secretarial positions, and 5 managerial positions.

In 1999, the number of new cases filed in the State Bar Court remained significantly below the number of filings made in the years prior to the shut down. There were 587 new case filings. The number of interim dispositions by State Bar Court was 307, also below former levels. State Bar Court final dispositions decreased from the number in 1998, to 408. The following table illustrates the filings and dispositions in 1999:

Table 15

State Bar Court Filings and Dispositions

Year 1999

<u>Filings and Dispositions</u>	<u>Number</u>
Disciplinary matters filed	468
Regulatory matters filed	119
Disciplinary interim dispositions	196
Regulatory interim dispositions	111
Disciplinary final dispositions	305

In 1999, there were 297 final dispositions in disciplinary and regulatory matters ordered by the California Supreme Court.

Thus, the total number of final disciplinary and regulatory dispositions by the State Bar Court and the Supreme Court in 1999 was 705 cases.

During 1999, State Bar Court hearing judges filed 113 decisions in disciplinary and regulatory matters, for an average of 23 decisions per judge. Hearing judges reviewed, modified (as appropriate) and approved an additional 224 written stipulations, for an average of 45 stipulation dispositions per hearing judge. In addition, hearing judges disposed of 140 other proceedings through

final orders, for an average of 28 cases per judge. The Review Department filed 25 opinions in cases on review and acted upon 196 matters delegated to it by the Supreme Court pursuant to rule 951 of the California Rules of Court.

D. ANNUAL YEAR 2000

In the year 2000, although the number of new cases filed in the State Bar Court increased significantly from the volume of cases filed in 1998 and 1999, the Court's total caseload remained below pre-1998 levels. The significant increase resulted from a third quarter project in OCTC which had the dual purpose of reducing the inventory of cases pending in investigation and those awaiting filing in State Bar Court, with a corresponding increase in productivity. The State Bar Court also conducted 152 Early Neutral Evaluation conferences for 53 accused attorneys.

The State Bar Court commenced work on three technology projects in order to operate efficiently with reduced staff and to continue to meet its performance standards. Special Discipline Master Lui had indicated his intent that funds be used for technology projects to assist the State Bar's disciplinary and regulatory activities. First, the State Bar Court replaced its audio-recording equipment with digital recording equipment. Second, the State Bar Court, which had no electronic docketing or master calendar system, began designing a case management system to be completed in 2001. Through the new case management system, the State Bar Court hopes to collect and record information only once so as to allow the State Bar Court to make its public records and calendars more accessible to the parties and the public. The third technology project related to a statutory requirement that the State Bar Court maintain a permanent record of its proceedings and decisions (Business and Professions Code Section 6080). Records of all prior disciplinary proceedings against members have been maintained solely in written, paper format. The State Bar Court began work on an electronic document storage system for the disciplinary records of members.

In 2000, the State Bar Court undertook an extensive analysis of the opinions of the Supreme Court and the published opinions of the Review

Department of the State Bar Court issued since 1990. Utilizing this information, the State Bar Court hopes to formulate revisions to Standards for Attorney Sanctions for Professional Misconduct which were adopted by the Board of Governors of the State Bar in 1986.

In November 2000, the terms of five of the eight State Bar Court judges expired. Several of the judicial appointments were made, for the first time, by the Governor, the Speaker of the Assembly, and the Speaker of the Senate Committee on Rules. The Supreme Court appointed the other judges. The State Bar Court assisted the departing judges with the completion of pending matters and provided orientation and training for the new judges.

The number of staff members remained steady at 26 in the year 2000.

In 2000, the number of new cases filed in the State Bar Court increased significantly to 903. The number of interim dispositions by State Bar Court was 355. State Bar Court final dispositions increased from 1999, to 476. The following table illustrates these filings and dispositions:

Table 16

State Bar Court Filings and Dispositions

Year 2000

<u>Filings and Dispositions</u>	<u>Number</u>
Disciplinary matters filed	762
Regulatory matters filed	141
Disciplinary interim dispositions	200
Regulatory interim dispositions	155
Disciplinary final dispositions	335

State Bar Court transmitted recommendations for discipline to the Supreme Court which resulted in 526 final disciplinary and regulatory dispositions.

Thus, the total number of final disciplinary and regulatory dispositions by the State Bar Court and the California Supreme Court in 2000 was 1,002 cases.

During 2000, State Bar Court hearing judges filed 179 decisions in disciplinary and regulatory proceedings, for an average of 36 decisions per judge. Hearing judges reviewed, modified (as appropriate) and approved 434 written stipulations as to facts, conclusions of law and recommended discipline, an average of 87 stipulation dispositions per judge. In addition, hearing judges disposed of 125 other proceedings through final orders, an average of 25 cases per judge. The Review Department filed 23 opinions in cases on review, and acted upon 200 matters delegated to it by the Supreme Court pursuant to rule 951 of the California Rules of Court.

IV. CLIENT SECURITY FUND ACTIVITIES AND STAFFING IN 1997, 1998, 1999, AND 2000

Policy oversight of CSF is a joint responsibility of the Board of Governors and the CSF Commission. The Board of Governors appoints the seven commissioners. The commission is assisted by staff in performing their key functions. These functions include screening, analyzing, investigating and making determinations on applications in accordance with rules of procedure of the fund, and monitoring the fund's balance and recommending to the Board of Governors necessary fee increases to guarantee continued solvency.

Discipline of the dishonest attorney is generally a precondition to payment by CSF. Outreach for the fund has been conducted mainly through the discipline system, especially at the Intake level. Complaint analysts are trained to provide information about the fund on the 800 line. When the 800 line was shutdown in June 1998, the fund's major outreach effort was discontinued. The

funding crisis also caused substantial delays in the processing of applications awaiting the outcome of discipline due to the impact of the crisis on overall processing of discipline dispositions.

Prior to 1998, CSF had been receiving over 1,000 applications per year for reimbursement, with a high of 1,217 applications filed in 1997. From the June 28, 1998 lay off to March 1, 1999, the number of new applications filed with CSF dropped significantly. When the discipline system was restored in March 1999, the monthly filing rate began to gradually increase. In the year 2000, the number of new applications filed returned to historical levels.

In 1997, 1998 and 1999, CSF had 14 authorized staff positions consisting of 1 managing attorney, 2 staff attorneys, 3 investigators, 1 paralegal, and 7 administrative and clerical staff. In late 1999, the Client Security Fund reorganized and decreased its staff from 14 to 9 positions, eliminating 3 investigators and 2 administrative/clerical positions. Although reduced in size, the CSF staff maintained its productivity in 2000.

A. ANNUAL YEAR 1997

In 1997, CSF opened 1,217 new applications and processed 1,230 applications to closure, with a result of 708 awards. The total pay out for the fund was \$4,660,614.

The following table shows the work of CSF's 14 staff members in 1997:

Table 17

Work of the Client Security Fund Staff

Year 1997

<u>Type of Activity</u>	<u>Number</u>
Applications filed	1,217
Applications closed (processed)	1,230
Applications paid	708

CSF closed 1997 with 1,223 applications pending. The average CSF investigator caseload was 75 investigations plus investigative assistance for cases assigned to the staff attorneys. The average CSF attorney caseload (including the managing attorney) was 200 applications. The paralegal had an average caseload of 400 cases for maintenance of cases awaiting the outcome of disciplinary proceedings plus assistance on cases assigned to the CSF attorneys.

B. ANNUAL YEAR 1998

In 1998, the fund opened 652 new applications and processed 978 applications to closure, resulting in 517 awards. The total fund pay out was \$3,627,082.

The 652 new applications filed in 1998 was the lowest number filed since 1987. The application filing rate did not begin to plummet until the discipline system was virtually shut down on June 26, 1998. On May 31, 1998, one month prior to the shut down, the number of new applications filed was still running at an annual rate of 1,010 claims.

The following table shows the work of CSF's 14 staff members in 1998:

Table 18

Work of the Client Security Fund Staff

Year 1998

<u>Type of Activity</u>	<u>Number</u>
Applications filed	652
Applications closed (processed)	978
Applications paid	517

1998 closed with 913 applications pending. The average CSF investigator's caseload was 75 investigations plus providing investigative assistance to the three CSF attorneys. The average caseload for CSF attorneys was 200 cases. The average caseload of the CSF paralegal was 400 prior to the shut down on June 26, 1998, and dropped in the remaining half of 1998 to 300 cases.

B. ANNUAL YEAR 1999

In 1999, there were 611 applications filed with CSF. This was the lowest number received since 1987. When the discipline system was restored in March 1999, the monthly filing rate for new applications gradually began to increase. During the year, 767 applications were processed to closure, resulting in 387 awards. The fund paid out a total of \$2,811,909 in 1999.

CSF had 14 authorized staff positions, with one investigator vacancy throughout the year. The work of CSF's 13 staff members is shown in the following table:

Table 19

Work of the Client Security Fund Staff

Year 1999

<u>Type of Activity</u>	<u>Number</u>
Applications filed	611
Applications closed (processed)	767
Applications paid	387

In 1999, CSF closed the year with 758 applications pending. The average CSF investigator caseload was 45 cases. The average CSF attorney caseload was 175 cases. The average caseload of the paralegal was 250 cases plus investigative assistance for cases assigned to the three CSF attorneys.

C. ANNUAL YEAR 2000

In 2000, the annual filing rate for new applications returned to historic levels. 1,049 new applications were filed. 1,095 applications were resolved, resulting in 595 awards totaling \$3,673,850.

In 2000, 5 staff positions were permanently eliminated. CSF reorganized its remaining 9 staff positions consisting of 1 manager, 2 staff attorneys, 1 paralegal, and 5 administrative and clerical staff. The work of these 9 staff members is shown in the following table:

Table 20

Work of the Client Security Fund Staff

Year 2000

<u>Type of Activity</u>	<u>Number</u>
Applications filed	1,049
Applications closed (processed)	1,095

The year 2000 closed with 708 applications pending. With its staff reduction, the investigator positions were eliminated. Accordingly, the average CSF attorney caseload was 250 cases. The paralegal's average caseload was 400 plus investigative assistance for cases assigned to the three CSF attorneys.

V. CONCLUSIONS

The State Bar's last year at full operation of its disciplinary activities was 1997. Of the three years 1998, 1999, and 2000, staffing numbers and levels for the State Bar's disciplinary activities in the year 2000 provide the best guidance in allocating resources.

The virtual shut down of the discipline system between June 26, 1998 and March 1, 1999 caused the State Bar to accumulate numerous complaints in its backlog of disciplinary cases. Facing an enormous backlog of open complaints when it reopened, OCTC instituted a plan to prioritize cases so the most serious complaints received attention first and resources were concentrated only on those complaints with the greatest risk of client and public harm. OCTC's staff reviewed the entire inventory according to those priorities.

In 2001, the California State Auditor reviewed the State Bar's priority system of focusing on the most serious complaints against attorneys. The State Auditor determined that "The State Bar has implemented reasonable methods for dealing with the numerous complaints that have accumulated in its backlog of disciplinary cases."⁷

The State Auditor found that the priority system helps the State Bar focus on serious offenses. The report states:

"Before the implementation of the new priority system, the State Bar did not use its resources in the most effective ways because it frequently forwarded relatively minor issues to the enforcement unit. Whenever it used valuable investigative resources on cases that had no merit, the

⁷ Bureau of State Audits, California State Auditor report (April 2001), p. 13.

State Bar had fewer resources to spend on cases that would result in discipline. Moreover, the enforcement unit filed fewer cases in the State Bar Court. Under the new policy, the chief trial counsel allocates time to a complaint according to a particular complaint's priority. Because the intake unit immediately forwards to the enforcement unit only the cases that pose the most significant threat to the public, more resources are available to process these types of cases...

The data indicate that the priority system is enabling the State Bar to use its resources better than in 1995. Another indication that the priority system results in a better application of resources is that the cases filed in State Bar Court increased from 20 percent in 1995 to 32 percent in 2000...

The percentage of cases closed without discipline in the intake and enforcement units was 56 percent in 2000 compared with 50 percent in 1995. The fact that the number of cases closed without discipline did not increase dramatically suggests the State Bar continues to evaluate complaints appropriately and that the new priority system has not yielded questionable outcomes for cases of attorney misconduct."⁸

At the end of 2000, the statutory backlog⁹ of complaints was 1,340 compared with 145 at the end of 1995. OCTC plans to reduce the backlog to 600 by December 31, 2001. The State Bar considers this amount an acceptable level for the present. OCTC plans to achieve this goal by targeting for resolution, on average, one additional backlogged complaint per investigator per month. The State Auditor concluded that "This increase to the investigators' current workload does not seem unreasonable because the number of cases advance to investigation has decreased under the new priority system. Also, the goal seems attainable because the State Bar's staff is close to pre-1998 levels, and the units have more experienced investigators than when the State Bar reopened in March 1999."¹⁰

⁸ Bureau of State Audits, California State Auditor report (April 2001), pages 14-16.

⁹ See Business and Professions Code Section 6094.5.

¹⁰ Bureau of State Audits, California State Auditor report (April 2001), p. 14.

OCTC's implementation of periodic random review of files ensures that staff's actions and determinations are appropriate and consistent with policies, case law, standards, and priorities. The random reviews will be conducted semiannually. The first review covered the quarter ending September 30, 2000. Senior staff attorneys and managers in OCTC reviewed 330 cases in the Intake and Enforcement Units. In general, areas of noncompliance identified were staff's failure to enter information into the computer database and poorly organized files. Other issues involved insufficient information being provided to complainants and accused attorneys in closing letters. None of the areas of concern were significant enough to adversely effect the overall outcome of the cases. There were no instances of inappropriately closed cases.

OCTC's staffing numbers and levels have been organized into generalized and specialized teams to gradually decrease the backlog of complaint cases to an acceptable level.

State Bar Court's staffing numbers and levels are consistent with its caseload. As increased caseloads require additional staff, positions are authorized for them.

CSF had nine staff members in the year 2000. A CSF staff number of nine appears to be the appropriate number for the foreseeable future¹¹.

Accordingly, the existing numbers and classifications of staff required to conduct the activities of the State Bar's discipline system appear reasonable and appropriate.

¹¹ For 2002 and 2003, the CSF annual assessment per active member will be \$35.00.

